

## **707 KAR 1:380. Monitoring and recovery of funds.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes the procedures that will be followed by the Department of Education in the event it is necessary to take corrective action on behalf of children with disabilities.

Section 1. Monitoring. (1) The Kentucky Department of Education shall conduct monitoring of LEAs and other agencies that provide educational services to children with disabilities on a regular basis to determine compliance with federal and state requirements. Off-site monitoring shall include review of the following:

- (a) LEA'S self-assessment;
- (b) Reports, including count and data tables, and performance reports;
- (c) Complaints and due process hearings;
- (d) Finance reports; and
- (e) Documentation indicating inclusion of children with disabilities in the assessment and accountability system.

(2) Off-site monitoring shall identify any areas of noncompliance that indicate the need for further investigation, including an on-site review.

(3) On-site monitoring may include:

- (a) Review of individual children's records, including records of children served by private or state-operated schools;
- (b) Interviews with staff;
- (c) A survey of parents;
- (d) Visits in schools and classrooms; and
- (e) Other activities, including review of financial records.

(4) Following an off-site or on-site review, the Kentucky Department of Education shall issue a written report. Deficiencies specified in the report shall be the basis for the LEA to develop a corrective action plan (CAP) for review and approval by the Kentucky Department of Education. Prior to the development of the CAP, the LEA shall have the opportunity to submit additional information to verify or clarify issues related to the report. Each CAP shall be monitored and enforced by the Kentucky Department of Education.

(5) A CAP shall be submitted to the Kentucky Department of Education no later than thirty (30) business days after the LEA receives the report of noncompliance. The CAP shall include:

- (a) A statement of the matter to be corrected; and
- (b) The steps the LEA shall take to correct the problem and document compliance.

(6) Within thirty (30) business days of receiving the CAP, the Kentucky Department of Education shall notify the LEA of the status of the CAP. If the Kentucky Department of Education

rejects the CAP, the LEA shall have fifteen (15) business days to submit a new CAP.

(7) A CAP approved by the Kentucky Department of Education shall be monitored and shall be an official document requiring the LEA to meet the specified activities. The Kentucky Department of Education shall not initiate further sanctions during the time period specified in the CAP unless requested by the LEA.

(8) Any noncompliance verified by monitoring shall be corrected within twelve (12) months from the date of the notification to the LEA of the noncompliance.

Section 2. Special Education Program Found Noncompliant. (1) The Kentucky Department of Education shall ensure that each LEA or other state agency responsible for providing the child's education complies with the LEA eligibility requirements contained in IDEA, 34 C.F.R. Part 300. To fulfill this obligation, the Kentucky Department of Education may implement the procedures established in this administrative regulation.

(2) A special education program may be found noncompliant through deficiencies identified in:

- (a) Off-site or on-site monitoring that were not corrected by a corrective action plan;
- (b) A final decision issued in complaint investigations after appeals have been exhausted;
- (c) Decisions issued in due process hearings or by the Exceptional Children Appeals Board that have become final after the appeal rights have been exhausted; or
- (d) Review of other data routinely collected by the Kentucky Department of Education.

Section 3. Causes for Imposing Sanctions. (1) The Kentucky Department of Education shall employ progressive sanctions until compliance is achieved, if an LEA:

(a) Fails to comply with a CAP, including not implementing the activities in an approved CAP;

(b) Fails to comply with the final decision in a complaint investigation after appeals have been exhausted, or the decision of a due process hearing officer or the Exceptional Children Appeals Board that has become final after appeal rights have been exhausted;

(c) Fails to manage the special education program in compliance with state and federal law;

(d) Fails to manage funds in compliance with state and federal law;

(e) Obtains funds through deception including falsifying application information for the purpose of obtaining funds; or

(f) Has been brought before a court of competent jurisdiction and found in noncompliance with state and federal special education requirements after appeal rights have been exhausted.

(2) Sanctions may be imposed if an LEA fails or refuses to correct an identified deficiency. The Kentucky Department of Education shall give notice at least ten (10) school days prior to initiating actions related to sanctions. The Kentucky Department of Education shall remain in contact with the appropriate LEA staff during the imposition of sanctions until the deficiencies are remedied.

Section 4. Sanctions. (1) The Kentucky Department of Education shall employ intensive assistance for at least a two (2) year period, including providing consultation, training, and technical assistance, or assigning a special education mentor, to remedy deficiencies and obtain voluntary compliance before imposing sanctions beyond a corrective action plan (CAP).

(2) The Kentucky Department of Education shall employ less severe sanctions before more severe sanctions until the LEA is in compliance. Progressive sanctions may include the following:

- (a) Conditional approval of IDEA funds. If verifiable progress is not made in implementing a

CAP, conditional funding shall be imposed. Conditions and timelines for continuing to receive IDEA funds shall be stated in the application approval letter or an attachment. Conditional funding may be employed for more than one year before imposing the next sanction, unless the LEA fails or refuses to meet the conditions or timelines. This sanction shall be lifted when the Kentucky Department of Education verifies compliance;

(b) Withholding of payments of IDEA funds. If an LEA fails or refuses to meet the conditions or timelines in the conditional approval letter, IDEA funds may be withheld by the Kentucky Department of Education. The Kentucky Department of Education shall make no further payments to the LEA until the Kentucky Department of Education verifies that compliance has been achieved. If the LEA makes no effort to correct the deficiency within sixty (60) calendar days of withholding of IDEA funds, further sanctions may be imposed pursuant to appropriate provisions in KRS 156.132. Withholding shall remain in effect during the pendency of any additional sanctions;

(c) Withholding of Support Education Excellence in Kentucky (SEEK) add-on funds. SEEK add-on funds for exceptional children shall be withheld in trust as required in KRS 157.224. This sanction shall be lifted when the Kentucky Department of Education verifies compliance with substantive special education requirements; or

(d) Other actions available under state and federal law shall be employed as circumstances warrant.

(3) The Kentucky Department of Education may conduct an off-site or on-site review to validate compliance.

Section 5. Opportunity for a Hearing. Prior to the withholding of IDEA or SEEK add-on funds, the LEA shall be provided notice and an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 6. Child Count Audit. (1) Child count figures submitted to the Kentucky Department of Education for the purpose of receiving funds under IDEA shall be subject to an audit validating the count. The Kentucky Department of Education shall conduct the child count audits prior to withholding funds pursuant to Section 4(2)(b) of this administrative regulation.

(2) If an LEA counts more children on its December 1 child count than are actually being served, or counts children who are ineligible to be counted for funding, the LEA shall reduce its child count or return the funds received for each misclassified child.

(3) The reduction may be initiated by:

(a) The LEA upon recognizing an error exists; or

(b) The Kentucky Department of Education through an on-site or off-site validation of the child count figures.

(4) Notice and an opportunity for a hearing under KRS Chapter 13B shall be provided before recovery of funds.

(5) Annually, the Kentucky Department of Education shall review and, as needed, select LEAs for a child count audit. An LEA may be selected for audit based on the following:

(a) Recurring noncompliances identified through off-site or on-site monitoring;

(b) Recurring substantiated complaints or final decisions from due process hearings or the Exceptional Children Appeals Board on similar issues;

(c) Failure to comply with a CAP within the specified timelines, or with the final decision in a complaint investigation after appeals have been exhausted, or with a hearing or appeal decision after appeals rights have been exhausted within specified timelines;

(d) Increases or decreases of total child counts, changes in categorical areas, or amendments to the original IDEA-B child count report that cannot be justified by district-supplied data

like annual child count data and districtwide enrollment data or other district-supplied sources of data;

(e) Unusual child count data, such as, more than fifteen (15) percent of the total school population reported as having disabilities, no change in numbers from year to year, high numbers of low incidence populations, or unusually low percentages of children with disabilities when compared to similar LEAs; or

(f) Previous audits resulting in reductions in addition to the presence of any of the items listed in paragraphs (a) through (e) of this subsection.

(6) Prior to initiating a child count audit, the Kentucky Department of Education shall:

(a) Notify the LEA in writing of the pending audit and request a roster of children by school, teacher, age, and individual disability category as reported on the specific count being audited;

(b) Verify the number of children on the roster with the number reported on the LEA's child count; and

(c) Randomly select from the roster the educational records to be audited.

(7) The Kentucky Department of Education shall conduct an on-site record review based on the standards in 707 KAR Chapter 1 and analyze the data collected to determine the number of records out of compliance.

(8) The Kentucky Department of Education shall prepare a draft audit report which includes:

(a) The reason for the child count audit;

(b) The date the audit was conducted;

(c) The total number of records reviewed;

(d) An analysis of the data obtained during the audit;

(e) The specific reductions by disability; and

(f) Notice that the LEA has thirty (30) business days from the date of the report to submit additional information for each child to demonstrate compliance.

(9) The LEA may request copies of the data collected and used to produce the findings in the audit report and submit additional information for each child to demonstrate compliance. If the LEA submits additional information to demonstrate compliance, the Kentucky Department of Education shall have thirty (30) business days from receipt of the information to review the documentation and issue a final report.

(10) Within thirty (30) business days of the date of the final audit report, if applicable, the LEA shall submit to the Kentucky Department of Education an amended child count report and a CAP to address deficiencies identified during the audit.

(11) The Kentucky Department of Education shall certify the reduced count and submit a correction to the U.S. Department of Education and the Kentucky Department of Education's Division of Finance.

(12) The IDEA grant award for the fiscal year affected shall be recalculated and:

(a) If the child count reduction affects the current year's project then the amount of the recovery shall be subtracted from the original allocation and shall not be sent to the LEA the following year;

(b) If the reduction in grant award is for a year in which funds have already been expended, the LEA's grant shall be reduced the following year by the reduced amount in a manner that shall not disrupt current delivery of instructional services; or

(c) If the reduction affects an application for the fiscal year, the LEA shall be notified of the reduction of the recalculated grant award for the following year.

(13) Follow-up audit. The Kentucky Department of Education shall conduct a follow-up audit at the time the CAP is scheduled for completion. The Kentucky Department of Education shall verify that deficiencies have been corrected. If the follow-up visit verifies that the LEA has completed all CAP activities and no areas of noncompliance are identified, the Kentucky De-

partment of Education shall issue a final report. (26 Ky.R. 2148; 27 Ky.R. 508; eff. 8-14-2000; 33 Ky.R. 3496; 34 Ky.R. 567; eff. 11-5-2007; Crt eff. 11-16-2018.)